

HOMETOWN HEROES SURVIVORS BENEFITS ACT OF 2002

NOVEMBER 14, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 5334]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5334) to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 5334 ensures that the survivors of a public safety officer who dies from a heart attack or fatal stroke while on duty or within 24 hours of a triggering occurrence shall qualify for a death benefit, currently set at \$262,100, under the Public Safety Officers Benefit program. Currently a heart attack or stroke must be ac-

accompanied by a traumatic event, meaning a wound or other condition of the body caused by external force, including injuries by bullets, smoke inhalation, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria. Excluded are occupational injuries, such as stress and strain. H.R. 5334 would effectively erase any distinction between traumatic and occupational injuries.

#### BACKGROUND AND NEED FOR THE LEGISLATION

The Public Safety Officers Benefit Program (PSOB) was enacted in 1976. It was not meant as a form of insurance or automatic benefit, but as a recognition for service that uniquely involved a direct risk to the well being of the public servant in question. Senator John McClellan stated during debate that the bill “is not health insurance; but it does provide for payment if an officer is killed in the line of duty, either by accident or by willful assault by a criminal.”<sup>1</sup> In addition, comments were made by Senator Hruska in support of the conceptual meaning of the PSOB program, stating, “While it is important that the survivors of public safety officers who are tragically slain be provided for, it is even more important that steps be taken to avoid unnecessary deaths of police and firefighters. The Law Enforcement Assistance Administration, which will administer this program, firmly believes that many deaths could be avoided if preventive actions were taken. By preventive action, I mean assuring that these public safety officers are in good physical and mental condition.”<sup>2</sup> Since its inception, PSOB has always required an element of intervention and causation, either from a second party, in the case of criminal intervention, or by conditions of employment unique to the profession of public service, such as smoke inhalation or chemical exposure. This causation had to be traumatic in nature in order for the program benefit to be triggered.

Heart attack and stroke deaths occur frequently amongst public safety officers, and account for nearly half of all firefighter fatalities. However, such heart attacks and strokes must be accompanied by a traumatic injury in order to be covered by the PSOB program. Claims are uncertain when a heart attack or stroke is involved relating to what qualifies as a direct and proximate result of actions or harms suffered while in the line of duty. Precedent has dictated that an officer who suffered a heart attack while struggling with a suspect, was ultimately denied benefits under this program when the court determined that a “struggle” was not sufficient to rise to the level of “injury.”<sup>3</sup>

Under 42 U.S.C. § 3796, the Bureau of Justice Assistance (BJA) is allowed to determine whether or not a public safety officer has died as a direct or proximate cause of a personal injury sustained in the line of duty, and if such criteria is met the Bureau is directed to pay a monetary benefit, currently at \$262,100, to such officers surviving family members. Currently, such benefits are not being paid to fatal heart attack or fatal stroke victims who are on

<sup>1</sup> Cong. Rec. S 11837–38, (July 19, 1976).

<sup>2</sup> 122 Cong. Rec. 30712.

<sup>3</sup> *Smykowski v. United States*, 647 F.2d 1103 (Ct. Cl. 1981).

duty unless a traumatic injury coexists with the occurrence of heart attack or stroke.

#### HEARINGS

No hearings were held on H.R. 5334.

#### COMMITTEE CONSIDERATION

On October 9, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 5334 by voice vote, a quorum being present.

#### VOTE OF THE COMMITTEE

There were no recorded votes on H.R. 5334.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### PERFORMANCE GOALS AND OBJECTIVES

H.R. 5334 authorizes mandatory spending. Public Safety Officers who deacease as a result of a heart attack or stroke while in the line of duty or within 24 hours of a triggering effect are granted a monetary benefit for their survivors, regardless of whether a traumatic injury is present at the time of the heart attack or stroke.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5334, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 1, 2002.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5334, the Hometown Heroes Survivors Benefits Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director*.

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

*H.R. 5334—Hometown Heroes Survivors Benefits Act of 2002.*

#### SUMMARY

Under current law, the families of public safety officers who have died as a result of injuries sustained in the line of duty are eligible for a one-time payment of \$262,100. The amount of this payment is adjusted each year for inflation. For incidents occurring on or after January 1, 2002, H.R. 5334 would extend that benefit to families of public safety officers who have died as a result of a heart attack or stroke suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation.

CBO estimates that enacting H.R. 5334 would increase direct spending by \$28 million in fiscal year 2003 and by about \$100 million over the 2003–2007 period. H.R. 5334 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of State, local, or tribal governments.

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5334 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007
CHANGES IN DIRECT SPENDING <sup>1</sup>					
Estimated Budget Authority	28	17	18	18	19
Estimated Outlays	28	17	18	18	19

1. In addition, CBO estimates that implementing H.R. 5334 would increase discretionary spending by less than \$1 million annually, assuming the availability of appropriated funds.

#### BASIS OF ESTIMATE

Based on information from the Department of Justice and from associations representing police officers, firefighters, and emergency medical technicians, CBO expects about 65 cases each year in which public safety officers die of heart attacks or strokes while on duty or within 24 hours after participating in a training exercise or responding to an emergency. Under the provisions of H.R. 5334, each officer's family would be eligible for a one-time payment of \$262,100. That amount is adjusted annually for inflation. Thus, CBO estimates that enacting the bill would increase direct spending by about \$15 million annually. Because the bill would authorize

payments for deaths that occurred since January 2002, we estimate payments in 2003 would total \$28 million.

In addition, under the provisions of H.R. 5334, public safety officers who have been permanently disabled as a result of a heart attack or stroke suffered while on duty or within 24 hours of a training exercise or emergency response would be eligible for a one-time payment of \$262,100, adjusted annually for inflation; however, this payment would be subject to the availability of appropriations. Based on information from the Department of Justice and from associations representing public safety officers, CBO estimates that any such costs would be less than \$1 million annually because of the small number of cases likely to be affected.

#### INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 5334 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of State, local, or tribal governments.

#### ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (226–2860)  
Impact on State, Local, and Tribal Governments: Angela Seitz  
(225–3220)  
Impact on the Private Sector: Paige Piper/Bach (226–2940)

#### ESTIMATE APPROVED BY:

Peter H. Fontaine  
Deputy Assistant Director for Budget Analysis

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 18 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The short title of H.R. 5334 is the “Hometown Heroes Survivors Benefits Act of 2002.”

H.R. 5334 mandates a presumption that any death of a public safety officer, which is either the direct or proximate result of a heart attack or stroke, if suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, is sustained in the line of duty. As such, the resulting death would be given full recognition under the Public Safety Officers Benefit Act, and such survivors, in accordance with existing provisions, would be given a monetary award, currently set at \$262,100, by the Bureau of Justice Assistance. Applicability of H.R. 5334 would be set to apply to all deaths occurring on or after January 1, 2002.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics)

and existing law in which no change is proposed is shown in roman):

**SECTION 1201 OF THE OMIBUS CRIME CONTROL AND  
SAFE STREETS ACT OF 1968**

PAYMENTS

SEC. 1201. (a) \* \* \*

\* \* \* \* \*

*(k) For purposes of this section, if a public safety officer dies as the direct and proximate result of a heart attack or stroke suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, that officer shall be presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty.*

MARKUP TRANSCRIPT

**BUSINESS MEETING**

**WEDNESDAY, OCTOBER 9, 2002**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 11:25 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

\* \* \* \* \*

Chairman SENSENBRENNER. Now, pursuant to notice, I call up the bill, H.R. 5334, and move its recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 5334, follows:]

107TH CONGRESS  
2D SESSION

# H. R. 5334

To ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 5, 2002

Mr. ETHERIDGE (for himself, Mr. HOYER, Mr. WELDON of Pennsylvania, Mr. OXLEY, Mr. ANDREWS, Mr. PASCRELL, Mr. SMITH of Michigan, and Mr. WATT of North Carolina) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hometown Heroes  
5 Survivors Benefits Act of 2002”.

1 **SEC. 2. FATAL HEART ATTACK OR STROKE ON DUTY PRE-**  
2 **SUMED TO BE DEATH IN LINE OF DUTY FOR**  
3 **PURPOSES OF PUBLIC SAFETY OFFICER SUR-**  
4 **VIVOR BENEFITS.**

5 Section 1201 of the Omnibus Crime Control and Safe  
6 Streets Act of 1968 (42 U.S.C. 3796) is amended by add-  
7 ing at the end the following new subsection:

8 “(k) For purposes of this section, if a public safety  
9 officer dies as the direct and proximate result of a heart  
10 attack or stroke suffered while on duty or within 24 hours  
11 after participating in a training exercise or responding to  
12 an emergency situation, that officer shall be presumed to  
13 have died as the direct and proximate result of a personal  
14 injury sustained in the line of duty.”.

15 **SEC. 3. APPLICABILITY.**

16 Subsection (k) of section 1201 of such Act (as added  
17 by section 2) shall apply to deaths occurring on or after  
18 January 1, 2002.



Chairman SENSENBRENNER. And the Chair recognizes himself for 5 minutes to explain the bill.

In 1981 Judge Kunzig of the United States Court of Claims handed his opinion in *Smykowski v. U.S.* by stating, "We would welcome legislation in which Congress addresses with specificity the application of the PSOPA to heart ailment situations." It may be 21 years later, but Congress is finally taking the good judge up on his offer.

H.R. 5334, the "Hometown Hero Survivor Benefits Act of 2002" introduced by Mr. Etheridge of North Carolina, attempts to clarify exactly how the Public Safety Officers Benefit Program is to be administered when a public safety officer suffers a fatal heart attack or a stroke while on duty or within 24 hours of an officer's response to an emergency situation or participation in a training exercise.

When addressing the Public Safety Officer Benefit Program, it is important to remember that this program is not intended to be a Federal insurance policy. State and local government entities generally provide insurance for their employees, and it has not been brought to their attention that public safety officers are lacking in insurance coverage.

Instead, the Committee must must address the issue which has been brought forward; namely, an ambiguity in the current statute. I believe this bill provides the Bureau of Justice assistance with the direction they require in reviewing and granting those benefits to deserving and qualified public safety officers who dedicate themselves to the public interest and pay the ultimate price for the public good.

Without objection, all Members may insert opening statements at the record at this point.

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I might strike the last word just for a second.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. And I know the gentleman is trying to move this, and I do this only because Mr. Etheridge has beaten up on me so much because he is from my home State. I probably heard more about this bill than anybody else on the Committee. So I think it is a good bill. I want to be able to tell him I said that in the Committee. So I yield back.

Chairman SENSENBRENNER. An additional copy of the transcript will be ordered for the gentleman from North Carolina.

Are there amendments? If there are no amendments, the Chair notes the presence of a reporting quorum. The question occurs on the motion to report the bill H.R. 5334 favorably.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is adopted. Without objection, the Chair is authorized to move to go to conference pursuant to House rule.

Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by House rules in which to submit additional dissenting, supplemental, or minority views.

This concludes the business before the Committee—oh, before adjourning the Committee, Mr. Gekas asked me to tell Members of the Immigration Subcommittee that there will be a markup immediately following my banging the gavel. The Committee is adjourned.

[Whereupon, at 11:56 a.m., the Committee was adjourned.]

